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REPLY TO:
OLYMPIA OFFICE
INSURANCE BUILDING
OLYMPIA, WASHINGTON 98504-
753-7300, AREA CODE 206

OFFICE OF

INSURANCE COMMISSIONER

BULLETIN

No. 87 - 4

September 24, 1987

Subject: MEDIGAP AND OTHER HEALTH INSURANCE MATTERS

A substantial number of complaints have come to us recently that may indicate that agents are being sent into the field without proper training, or worse, may demonstrate that some agents have a disregard for the high standards required of insurance agents.

We expect insurance companies and general agents to bring the contents of this bulletin to the attention of their agents. Incidentally, there seems to be a misconception on the part of some insurers that there is a class of "independent" agents as to which they have little or no responsibility. That is not the case. If an insurer has appointed an agent to act for it, the insurer will generally be responsible for that agent's act performed within the scope of the agent's authority, even though the agent was actuated by fraudulent intent.

Item 1. The requirements of RCW 48.66.140 are not being met. It states:

> Any time that completion of a medical history of a patient is required in order for an application for a medicare supplement insurance policy to be accepted, that medical history must be completed by the applicant, a relative of the applicant, a legal guardian of the applicant, or a physician.

Based on advice we have received from the attorney general's office, "patient" should be treated as synonymous with "applicant." Accordingly, under no circumstances may an agent complete a medical history for an application for medicare supplement insurance.

Item 2. Telephone callers are using deceptive and misleading statements, particularly in setting up appointments for agents with prospective insureds. The caller is often not clearly identified. Attempts are sometimes made to cause the listener to believe that Washington D.C. is calling, or that a federal agent is in town who will be by to provide information on social security or medicare. Or, the approach may be that the senior citizen is "obligated" by the federal government to

understand the DRG system, or some revolutionary change in medicare, and someone will be at their home in the afternoon to furnish this "mandatory knowledge." Creating such false concern in the minds of the consumers is outrageous and will not be tolerated. Such practice was the subject of a recent cease and desist order. (Perhaps some agents do not realize that it is a felony under federal law to falsely represent an association or agency relationship with the Medicare program or any federal agency.)

Item 3. Washington state has specific telephone solicitation requirements which must be met. RCW 80.36.390(2) provides:

> A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

In our eyes, the purpose of arranging an appointment with an insurance agent is to enable the agent to solicit insurance. If the prospective insured has no idea that insurance is involved, the requirements of the law have not been met.

RCW 80.36.390 is not part of the insurance code, but its provisions should be known by insurance companies and their agents. The statute permits a person called to have his or her name removed from the telephone list used by the caller, provides for fines of up to $1,000 for each violation, and creates a civil remedy to recover damages of at least $100 for individual violations, plus attorney fees and costs of suit, where an individual is aggrieved by repeated violations.

A companion statute, RCW 80.36.400, prohibits the use of devices which automatically dial telephone numbers and play a recorded message when a connection is made, for unsolicited commercial solicitations. The statute creates a presumption that a recipient of such a solicitation sustains damages of $500, recoverable under the consumer protection act, Chapter 19.86 RCW.

Item 4. Written notices overemphasizing or misrepresenting "Changes in Medicare," are being mailed to consumers. We do not object to current and accurate information being given out. We do object to "New-for-1987"-type-announcements which falsely describe a "new Medicare payment system announced by the federal government to be effective in 1987," when the reference is to the Prospective Payment System which Medicare began in 1983. Obviously, the purpose is to get the recipients' attention by creating an undue concern in the minds of the consumers. A cease and desist order was recently issued relative to one such announcement. If necessary, more will follow.

We will expect that such announcements with respect to changes for 1988 will be moderate, accurate and factual. We will deal appropriately with insurers and agents that exceed proper bounds and fail to remember that insurance is something special. RCW 48.01.030 should be remembered:

> The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance.

Item 5. Violations continue to occur with respect to the requirements in WAC 284-30-550. Receipts are not being given when an agent receives cash or accepts a check payable to the agency, or the receipt that is given omits required information, such as date, agent's identity and address, the applicant's identity, amount of premium paid, the insurer's full name or a description of the coverage.

Item 6. Cases still occur where policies are not delivered promptly as required by RCW 48.18.260 and WAC 284-30-580, and occasionally an agent is found to be holding a policy in violation of WAC 284-30-580(3).

Item 7. "Twisting," as defined in RCW 48.30.180, continues to be a serious violation of the insurance code. It is sometimes difficult for us to prove a misrepresentation or a misleading comparison, yet the insured has been harmed by being rolled from company to company--by waiting periods, preexisting condition provisions or inferior coverage, for example. The agent is looking at a commission, not the best interests of the insured. In such instances, we are prepared to proceed against the agent's license on the basis that the agent is incompetent or untrustworthy and a source of injury and loss to the public.

CONCLUSION. We are fortunate in having a large number of competent insurance agents in our state who are dedicated to serving the best interests of the consumer. A few bad ones can give the industry an undeserved bad name. We are increasing our investigative staff and will be taking stronger action to identify agents who should be re-trained or revoked. Where general agents, or supervisory or managing agents seem to be the source of a problem, we will deal with them. Affiliated agents may sometimes be embarrassed by our action because we intend to let the public know what we are doing. Affiliated licensees may receive adverse recognition because of their association, even though they are innocent of wrongdoing. The lesson: Agents should be cautious of their affiliations.

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